

## § 170.454

environmental analysis and after consultation with the affected tribe(s) and the appropriate Secretary(s); and  
(d) Construction easements.

### DESIGN

#### **§ 170.454 What design standards are used in the IRR Program?**

(a) Appendix B to this subpart lists design standards that BIA may use for the IRR program.

(b) BIA may also use FHWA-approved State or tribal design standards.

(c) Tribes may propose road and bridge design standards to be used in the IRR Program that are consistent with or exceed applicable Federal standards. The standards may be negotiated between BIA and the tribe and included in a self-determination contract or self-governance agreement.

#### **§ 170.455 How are design standards used in IRR projects?**

The standards in this section must be applied to each construction project consistent with a minimum 20-year design life for highway projects and 75-year design life for highway bridges. The design of IRR projects must take into consideration:

(a) The existing and planned future use of the IRR transportation facility in a manner that is conducive to safety, durability, and economy of maintenance;

(b) The particular needs of each locality, and the environmental, scenic, historic, aesthetic, community, and other cultural values and mobility needs in a cost-effective manner; and

(c) Access and accommodation for other modes of transportation.

#### **§ 170.456 When can a tribe request an exception from the design standards?**

A tribe can request an exception from the design standards in Appendix B of this subpart under the conditions in this section. The tribe must submit its request for a design exception to the BIA Regional Office for approval. If the BIA Regional Office has design exception approval authority within their IRR Stewardship Plan with FHWA, they may approve or decline the request; otherwise BIA forwards the request to FHWA. The engineer of

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record must submit written documentation with appropriate supporting data, sketches, details, and justification based on engineering analysis.

(a) FHWA or BIA may grant exceptions for:

(1) Experimental features on projects; and

(2) Projects where conditions warrant that exceptions be made.

(b) FHWA or BIA can approve a project design that does not conform to the minimum criteria only after giving due consideration to all project conditions, such as:

(1) Maximum service and safety benefits for the dollar invested;

(2) Compatibility with adjacent features; and

(3) Probable time before reconstruction of the project due to changed conditions or transportation demands.

(c) FHWA or BIA have 30 days from receiving the request to approve or decline the exception.

#### **§ 170.457 Can a tribe appeal a denial?**

Yes. If BIA denies a design exception request made by a tribe, the decision may be appealed to FHWA. Tribes may appeal the denial of a design exception to: FHWA, 400 7th St., SW., HFL-1, Washington, DC 20590. If FHWA denies a design exception, the tribe may appeal the decision to the next higher level of review within the Department of Transportation at the Office of the FHWA Administrator, 400 7th Street, SW., HOA-1, Washington, DC 20590.

### REVIEW AND APPROVAL OF PLANS, SPECIFICATIONS, AND ESTIMATES

#### **§ 170.460 What must a project package include?**

(a) The minimum requirements for a project package are:

(1) Plans;

(2) Specifications; and

(3) Estimates.

(b) In order to receive project approval the following additional items are required:

(1) A tribal resolution or other authorized document supporting the project;

(2) Right-of-way clearances;

(3) Required environmental, archeological, and cultural clearances; and

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(4) Identification of design exceptions if used in the plans.

(c) A tribe may include additional items at its option.

### **§ 170.461 May a tribe approve plans, specifications, and estimates?**

A tribe may review and approve plan, specification, and estimate (PS&E) project packages for IRR Program funded projects when:

(a) This function is included in the tribe's self-determination contract or self-governance agreement; or

(b) The tribe is the owner of the IRR transportation facility or is responsible for maintaining the facility. In this case, the tribe must have at least 30 days to review and approve the proposed PS&E package.

### **§ 170.462 When may a self-determination contract or self-governance agreement include PS&E review and approval?**

(a) For a BIA or tribally-owned facility, the tribe may assume responsibility to review and approve PS&E packages under a self-determination contract or self-governance agreement if the tribe specifies in the contract or agreement that:

(1) A licensed professional engineer will supervise design and approval of the PS&E package;

(2) A licensed professional engineer will certify that the PS&E meets or exceeds the design, health, and safety standards in appendix B to subpart D for an IRR transportation facility;

(3) An additional licensed professional engineer (either a BIA engineer or, if the tribe chooses, a non-BIA engineer) will review the PS&E package when it is at least 95 percent complete; and

(4) If the project is to be performed by the tribe, the tribe will provide a copy of the certification and approved PS&E package to BIA before the solicitation of the project or notice to proceed.

(b) For a facility maintained by a public authority other than BIA or a tribe, in addition to satisfying the requirements of paragraph (a) of this section:

(1) The public authority must have a chance to review and approve the PS&E when it is between 75 percent

and 95 percent complete, unless an agreement between the tribe and the public authority states otherwise;

(2) If a licensed professional engineer performs the review and approval when the PS&E provided is at least 95 percent complete, the second level review requirement in paragraph (a)(2) of this section is satisfied; and

(3) The tribe must allow the public authority at least 30 days for review and approval. If the public authority does not meet this deadline or an extension granted by the tribe, the tribe may proceed with the review in accordance with paragraph (a)(2) of this section.

(c) If a BIA engineer does not complete a review within 30 days under paragraph (a)(2) of this section, the tribe may contract its own engineer to perform the review.

### **§ 170.463 What should the Secretary do if a design deficiency is identified?**

If a review under § 170.462 identifies a design deficiency that may jeopardize public health and safety if the facility is completed, the Secretary must:

(a) For a tribally-approved PS&E package, immediately notify the tribe of the design deficiency and request that the tribe promptly resolve the deficiency in accordance with the standards in appendix B to subpart D; and

(b) For a BIA-approved PS&E package, promptly resolve the deficiency in accordance with the standards in appendix B to subpart D and notify the tribe of the required design changes.

## CONSTRUCTION AND CONSTRUCTION MONITORING

### **§ 170.470 What are the IRR construction standards?**

(a) Appendix B to this subpart lists design standards that may be used for roads and bridges.

(1) Tribes may propose road and highway bridge construction standards that are consistent with or exceed these standards.

(2) BIA may also use FHWA-approved, State or tribal road and highway bridge construction standards.

(b) For designing and building eligible intermodal projects funded by the IRR Program, tribes must use either: